

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEC-7 1978

DEPARTMENT OF REAL ESTATE
BY *R. Schubert*

In the Matter of the Application of)

MICHAEL WALTER SIMS, aka
Michael Walter Schwer,

No. H- 130 SA

L- 17722

Respondent.

DECISION

The Proposed Decision dated November 15, 1978
of the Administrative Law Judge of the Office of Administrative
Hearings, is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

The application for a real estate salesperson
license is denied. There is no statutory restriction on when
application may again be made for this license. If and when
application is again made for this license, all competent evidence
of rehabilitation presented by respondent will be considered by
the Real Estate Commissioner. A copy of the Commissioner's
Criteria of Rehabilitation is appended hereto for the information
of respondent.

This Decision shall become effective at 12 o'clock
noon on December 27, 1978.

IT IS SO ORDERED

12/5/78

David H. Fox

DAVID H. FOX
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)

MICHAEL WALTER SIMS, aka
Michael Walter Schwer,

File No. H-130 SA

L-17722

Respondent)

PROPOSED DECISION

This matter came on regularly for hearing before Marilyn L. Nelson, Administrative Law Judge, of the Office of Administrative Hearings, at Los Angeles, California, on November 8, 1978, at the hour of 2:30 p.m. Marjorie P. Mersel, Counsel, represented the complainant. Respondent appeared in person and was represented by Walter N. Wetterman, Attorney at Law. Oral and documentary evidence having been introduced and the matter submitted, the Administrative Law Judge finds the following facts:

I

Respondent Michael Walter Sims, aka Michael Walter Schwer, filed his application for a real estate salesperson license on June 9, 1978. On June 16, 1978, respondent was issued a real estate salesperson license. That license was suspended on September 12, 1978 pending final determination of the Statement of Issues herein.

II

In response to Question 7(a) of said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving traffic violation?", respondent answered "No."

III

On October 16, 1973, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of

California, respondent was convicted, upon his plea of nolo contendere, of the crime of violating Penal Code Section 459 (burglary) a crime involving moral turpitude. As a result of said conviction, respondent paid a fine of \$20 plus \$2 penalty assessment.

IV

The circumstances surrounding said conviction were that at age nineteen respondent became involved with some friends in the burglary of a barbershop. He plead nolo contendere upon the advice of his attorney, a public defender. It was his understanding from his attorney that by so pleading in three years the matter would be sealed. He did not take any affirmative steps to have the matter sealed, however.

V

In completing question 7(a) of his application for a real estate salesperson license respondent was aware of his said conviction. He had not listed it on other applications and he was afraid of repercussions with the Department of Real Estate by listing the conviction. He did read the warning language contained in the application after questions 7(a) and 7(b) to the effect that all convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges dismissed or expunged.

VI

Respondent has in the past rendered community service to a drug rehabilitation program in Chicago. He is certified as a respiratory therapist and is actively working in this field. He is now twenty-four years of age and plans to be married soon to a registered nurse.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists to deny respondent's application for a real estate salesperson license pursuant to Sections 480(c) and 10177(a) of the Business and Professions Code by reason of Findings II through V.

II

Cause does not exist to deny respondent's application for a real estate salesperson license pursuant to Section 10177(b) of the Business and Professions Code in that although the crime

of which he has been convicted involves moral turpitude and is substantially related to the qualifications or duties of a real estate salesperson licensee, the time of the occurrence of the event is too remote from the present to render the conviction material.

III

Respondent's evidence relating to mitigation and rehabilitation has not established at this time that it would be in the best interests of the public to grant him a real estate salesperson license.

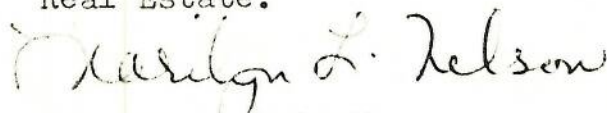
* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of respondent Michael Walter Sims, aka Michael Walter Schwer, is hereby denied.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on November 8, 1978, at Los Angeles, California, and recommend its adoption as the decision of the Department of Real Estate.

DATED: NOV 15 1978



MARILYN L. NELSON
Administrative Law Judge
Office of Administrative Hearings

MLN:cr

CRITERIA OF REHABILITATION (DENIAL)

Your application for a real estate license has been denied by the Real Estate Commissioner on the grounds set forth in the attached Decision. The criteria in Regulation 2911 have been developed by the Department of Real Estate as guidelines to assist an applicant in a rehabilitation program and in the presentation of his or her case should application again be made for this license or in the event of a petition for the removal of restrictions from a restricted license.

Not all of the factors listed below will be applicable in the case of every person to whom a license has been denied, nor will each applicable factor necessarily be given equal weight in evaluating the rehabilitation of an individual. The individual must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

* * *

2911. Criteria of Rehabilitation (Denial). The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

R/E Form 573
(Rev. 3-20-78)

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Successful completion or early discharge from probation or parole.

(e) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(f) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(g) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

(h) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(i) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

(j) Correction of business practices resulting in injury to others or with the potential to cause such injury.

(k) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(l) New and different social business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(m) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- (4) Evidence from psychiatrists or other persons competent to testify with regard to neuro-psychiatric or emotional disturbances.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

OCT 25 1978

DEPARTMENT OF REAL ESTATE

BY *[Signature]*

In the Matter of the Application of)
MICHAEL WALTER SIMS, ETC.,)
Respondent)

No. H-130 SA
L-17722

NOTICE OF HEARING ON APPLICATION

(Pursuant to Section 11509 of the Government Code)

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY NOTIFIED that a hearing will be held before the Department of Real Estate at 314 West First Street, Los Angeles, California, on the 8th day of November, 1978, at the hour of 2:30 p.m., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing, nor are you required to be represented by counsel. However, if you are not present at the hearing in person, nor represented at the hearing by counsel, the agency may take disciplinary action against you upon any express admissions, or upon other evidence, and in the event that no notice of defense has been filed by you, upon affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the agency action sought and if you are not present nor represented at the hearing, the agency may act upon your application without taking evidence.

You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

Dated: October 25, 1978

cc: Michael Walter Sims
Walter N. Wetterman
Professional Realtors Inc.
Sacto
OAH
WVB

DAVID H. FOX
REAL ESTATE COMMISSIONER

BY *[Signature]*
Attorney

SEP 14 1978

DEPARTMENT OF REAL ESTATE

BY *[Signature]*

RECEIVED

SEP 13 1978

DEPT. OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Application of)	No. H-130 SA
MICHAEL WALTER SIMS, aka)	
Michael Walter Schwer,)	
Respondent.)	

ORDER SUSPENDING REAL ESTATE LICENSE

TO: MICHAEL WALTER SIMS, Respondent
2833 N. Bristol
Santa Ana, California 92607

On June 9, 1978, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as Department) an application for a real estate salesperson license. In response to a question in said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation?" respondent answered "No".

On June 16, 1978, Department issued a real estate salesperson license to respondent in reliance upon the aforesaid answer of respondent.


1 On September 11, 1978, in Case No. 130 SA, a Statement
2 of Issues signed by a Deputy Real Estate Commissioner of the
3 State of California was filed charging respondent with having
4 procured a real estate license by fraud, misrepresentation or
5 deceit and with knowingly having made false statement of fact
6 required to be revealed in the application for such license.

7 NOW, THEREFORE, IT IS ORDERED under authority of
8 Section 10177.1 of the Business and Professions Code of the
9 State of California that the real estate salesperson license
10 heretofore issued to respondent and the exercise of any
11 privileges thereunder are hereby suspended pending final
12 determination made after a hearing on the aforesaid Statement
13 of Issues, a copy of which is attached hereto.

14 IT IS FURTHER ORDERED that all license certificates
15 and identification cards issued by Department which are in the
16 possession of respondent be immediately surrendered by personal
17 delivery or by mailing in the enclosed self-addressed envelope
18 to: Department of Real Estate, 107 South Broadway, Room 8107,
19 Los Angeles, California 90012.

20 This Order shall be effective immediately.

21 DATED: 9/12/78

22 
23 DAVID H. FOX

24 Real Estate Commissioner
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MARJORIE P. MERSEL, Counsel
Department of Real Estate
167 South Broadway, Room 8107
Los Angeles, California 90012

CPA 5111

SEP 11 1978

DEPARTMENT OF REAL ESTATE
BY L. H. ...

(213) 620-4790

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Application of)
MICHAEL WALTER SIMS, aka)
Michael Walter Schwer,)
Respondent.)

No. H-130 SA

STATEMENT OF ISSUES

The Real Estate Commissioner, in conformity with Section 10152, Division 4, Business and Professions Code of the State of California, requires further proof of the honesty and truthfulness of MICHAEL WALTER SIMS, aka Michael Walter Schwer, in connection with his application for a real estate salesperson license filed on June 9, 1978, and in relation thereto will consider the following:

I

MICHAEL WALTER SIMS, aka Michael Walter Schwer, hereinafter referred to as respondent, was issued a real estate salesperson license on or about June 16, 1978, following respondent's application therefor on or about June 9, 1978.

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II

In response to Question 7a of said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving traffic violation?", respondent answered "No".

III

On or about October 16, 1973, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, respondent was convicted of the crime of violating Penal Code Section 459 (Burglary), a crime involving moral turpitude.

IV

The crime which respondent was convicted of, as alleged in Paragraph III above bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

V

Respondent's failure to reveal the conviction set forth in Paragraph III above in said application constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code of the State of California.

VI

Respondent's criminal conviction, as alleged in Paragraph III above, warrants denial of respondent's application for a real estate license under Section 10177(b) of the

1 Business and Professions Code of the State of California.

2
3 These proceedings are brought under the provisions of
4 Section 10100, Division 4, of the Business and Professions Code
5 of the State of California and Sections 11500 through 11528 of
6 the Government Code.

7 Dated at Santa Ana, California
8 this 11th day of September, 1978.

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10 EUGENE B. NEUFELD
11 Deputy Real Estate Commissioner
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26 cc: Michael Walter Sims
27 Professional Realtors, Inc.
28 Sacto.
29 OAH
30 WWB
31 EBN

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEC-7 1978

DEPARTMENT OF REAL ESTATE
R. H. H. H. H.

In the Matter of the Application of

MICHAEL WALTER SIMS, aka
Michael Walter Schwer,

Respondent.

No. H- 130 SA

L- 17722

RECEIVED
Dept. of Real Estate

OCT 03 2001

Accounting #10

DECISION

The Proposed Decision dated November 15, 1978
of the Administrative Law Judge of the Office of Administrative
Hearings, is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

The application for a real estate salesperson
license is denied. There is no statutory restriction on when
application may again be made for this license. If and when
application is again made for this license, all competent evidence
of rehabilitation presented by respondent will be considered by
the Real Estate Commissioner. A copy of the Commissioner's
Criteria of Rehabilitation is appended hereto for the information
of respondent.

This Decision shall become effective at 12 o'clock
noon on December 27, 1978.

IT IS SO ORDERED

12/5/78

David H. Fox
DAVID H. FOX
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)

MICHAEL WALTER SIMS, aka
Michael Walter Schwer,

Respondent

File No. H-130 SA

L-1772

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Dept. of Real Estate

OCT 03 2001

Accounting #10

PROPOSED DECISION

This matter came on regularly for hearing before Marilyn L. Nelson, Administrative Law Judge, of the Office of Administrative Hearings, at Los Angeles, California, on November 8, 1978, at the hour of 2:30 p.m. Marjorie P. Mersel, Counsel, represented the complainant. Respondent appeared in person and was represented by Walter N. Wetterman, Attorney at Law. Oral and documentary evidence having been introduced and the matter submitted, the Administrative Law Judge finds the following facts:

I

Respondent Michael Walter Sims, aka Michael Walter Schwer, filed his application for a real estate salesperson license on June 9, 1978. On June 16, 1978, respondent was issued a real estate salesperson license. That license was suspended on September 12, 1978 pending final determination of the Statement of Issues herein.

II

In response to Question 7(a) of said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving traffic violation?", respondent answered "No."

III

On October 16, 1973, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of

California, respondent was convicted, upon his plea of nolo contendere, of the crime of violating Penal Code Section 459 (burglary) a crime involving moral turpitude. As a result of said conviction, respondent paid a fine of \$20 plus \$2 penalty assessment.

IV

The circumstances surrounding said conviction were that at age nineteen respondent became involved with some friends in the burglary of a barbershop. He plead nolo contendere upon the advice of his attorney, a public defender. It was his understanding from his attorney that by so pleading in three years the matter would be sealed. He did not take any affirmative steps to have the matter sealed, however.

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Accounting #10

V

In completing Question 7(a) of his application for a real estate salesperson license respondent was aware of his said conviction. He had not listed it on other applications and he was afraid of repercussions with the Department of Real Estate by listing the conviction. He did read the warning language contained in the application after questions 7(a) and 7(b) to the effect that all convictions must be disclosed even if the plea or verdict was thereafter set aside and the charges dismissed or expunged.

VI

Respondent has in the past rendered community service to a drug rehabilitation program in Chicago. He is certified as a respiratory therapist and is actively working in this field. He is now twenty-four years of age and plans to be married soon to a registered nurse.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists to deny respondent's application for a real estate salesperson license pursuant to Sections 480(c) and 10177(a) of the Business and Professions Code by reason of Findings II through V.

II

Cause does not exist to deny respondent's application for a real estate salesperson license pursuant to Section 10177(b) of the Business and Professions Code in that although the crime

of which he has been convicted involves moral turpitude and is substantially related to the qualifications or duties of a real estate salesperson licensee, the time of the occurrence of the event is too remote from the present to render the conviction material.

III

Respondent's evidence relating to mitigation and rehabilitation has not established at this time that it would be in the best interests of the public to grant him a real estate salesperson license.

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Dept. of Real Estate

OCT 03 2001

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Accounting #10

The application of respondent Michael Walter Sims, aka Michael Walter Schwer, is hereby denied.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on November 8, 1978, at Los Angeles, California, and recommend its adoption as the decision of the Department of Real Estate.

DATED: NOV 15 1978

Marilyn L. Nelson

MARILYN L. NELSON
Administrative Law Judge
Office of Administrative Hearings

MLN: cr

SEP 14 1978

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DEPT. OF REAL ESTATE

BY *[Signature]*

SEP 15 1978

DEPT. OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Application of)	No. H-130 SA
MICHAEL WALTER SIMS, aka)	
Michael Walter Schwer,)	
Respondent.)	

ORDER SUSPENDING REAL ESTATE LICENSE

TO: MICHAEL WALTER SIMS, Respondent
2833 N. Bristol
Santa Ana, California 92607

On June 9, 1978, the above-named respondent filed with the Department of Real Estate of the State of California (hereinafter referred to as Department) an application for a real estate salesperson license. In response to a question in said application, to wit: "Have you ever been convicted of any violation of law other than a non-moving type of traffic violation?" respondent answered "No".

On June 16, 1978, Department issued a real estate salesperson license to respondent in reliance upon the aforesaid answer of respondent.

1 On September 11, 1978, in Case No. 130 SA, a Statement
2 of Issues signed by a Deputy Real Estate Commissioner of the
3 State of California was filed charging respondent with having
4 procured a real estate license by fraud, misrepresentation or
5 deceit and with knowingly having made false statement of fact
6 required to be revealed in the application for such license.

7 NOW, THEREFORE, IT IS ORDERED under authority of **RECEIVED**
8 Section 10177.1 of the Business and Professions Code of **Dept. of Real Estate**
9 State of California that the real estate salesperson license **OCT 03 2001**
10 heretofore issued to respondent and the exercise of any **Accounting #10**
11 privileges thereunder are hereby suspended pending final
12 determination made after a hearing on the aforesaid Statement
13 of Issues, a copy of which is attached hereto.

14 IT IS FURTHER ORDERED that all license certificates
15 and identification cards issued by Department which are in the
16 possession of respondent be immediately surrendered by personal
17 delivery or by mailing in the enclosed self-addressed envelope
18 to: Department of Real Estate, 107 South Broadway, Room 8107,
19 Los Angeles, California 90012.

20 This Order shall be effective immediately.

21 DATED: 9/12/78

22 *David H. Fox*
23 DAVID H. FOX
24 Real Estate Commissioner
25
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1771 571

SEP 11 1978

MARJORIE P. MERSEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

DEPARTMENT OF REAL ESTATE
BY H. H. ...

(213) 620-4790

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Application of)
MICHAEL WALTER SIMS, aka)
Michael Walter Schwer,)
Respondent.)

No. H-130 SA
STATEMENT OF ISSUES

The Real Estate Commissioner, in conformity with Section 10152, Division 4, Business and Professions Code of the State of California, requires further proof of the honesty and truthfulness of MICHAEL WALTER SIMS, aka Michael Walter Schwer, in connection with his application for a real estate salesperson license filed on June 9, 1978, and in relation thereto will consider the following:

I

MICHAEL WALTER SIMS, aka Michael Walter Schwer, hereinafter referred to as respondent, was issued a real estate salesperson license on or about June 16, 1978, following respondent's application therefor on or about June 9, 1978.

II

In response to Question 7a of said application, to wit "Have you ever been convicted of any violation of law other than a non-moving traffic violation?", respondent answered "No".

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On or about October 16, 1973, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, respondent was convicted of the crime of violating Penal Code Section 459 (Burglary), a crime involving moral turpitude.

RECEIVED
Dept. of Real Estate
OCT 03 2001
Accounting #10

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The crime which respondent was convicted of, as alleged in Paragraph III above bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

V

Respondent's failure to reveal the conviction set forth in Paragraph III above in said application constitutes the procurement of a real estate license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code of the State of California.

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Respondent's criminal conviction, as alleged in Paragraph III above, warrants denial of respondent's application for a real estate license under Section 10177(b) of the

1 Business and Professions Code of the State of California.

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3 These proceedings are brought under the provisions of
4 Section 10100, Division 4, of the Business and Professions Code
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6 the Government Code.

7 Dated at Santa Ana, California
8 this 11th day of September, 1978.

RECEIVED
Dept. of Real Estate

OCT 03 2001

Accounting #10

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10 EUGENE B. NEUFELD
11 Deputy Real Estate Commissioner
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22 cc: Michael Walter Sims
23 Professional Realtors, Inc.
24 Sacto.
25 OAH
26 WWB
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